

SMALL CLAIMS COURT (NEBRASKA)



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SMALL CLAIMS COURT

Small Claims Court provides a prompt and inexpensive way to resolve minor disputes. Legal procedures are held to a minimum and lawyers may not participate. Small Claims Court is limited to civil (non-criminal) actions involving disputes over amounts of money owed, damage to property, or seeking the return of personal property. Judgments in small claims court may not exceed **\$3,500.00**.

MEDIATION

Nebraska has 6 mediation centers if you would like to try to settle your claim outside the court system.

More information can be found at:

<http://court.nol.org/mediation/center-locations.shtml>

SMALL CLAIMS COURT GLOSSARY

- **Plaintiff:** The person who files a lawsuit.
- **Defendant:** The person who is being sued.
- **Continuance:** Postponement of a hearing to a later date.
- **Judgment:** The official decision or order of the court.
- **Judgment Creditor:** The person for whom the judgment is entered; the person who wins the lawsuit.
- **Judgment Debtor:** The person against whom the judgment is entered; the person who loses the lawsuit.
- **Execution:** An order by the court directing the sheriff to seize the judgment debtor's property, sell it, and apply the money to the judgment against the debtor.
- **Garnishment:** A proceeding to obtain property, wages or money owed to the judgment debtor by a third person and apply it to the amount owed the judgment creditor.

BEGINNING A SMALL CLAIM

To start a small claim proceeding, you must file a claim form with the clerk of the county court. The form is available at the county court or at <http://court.nol.org/forms/county/CC-4-1.pdf>. You may complete the form at the court or you may take it with you and have a lawyer or anyone else help you complete it.

The claim form requires a brief statement of the reasons the plaintiff (the person filing the claim) believes that money is owed or that property should be returned. The defendant (the person being sued) must be properly served with a copy of the claim. The plaintiff must know the defendant's proper name and whether the defendant is an individual, a corporation, a partnership or other legal entity.

The claim form must be signed before a judge, a clerk, deputy or assistant clerk of the county court, a notary public, or other person authorized by law to take acknowledgments. It may be filed in person or by mail and must be accompanied by the appropriate fees to the court. The initial fee for filing a claim is **\$26.00**. This is subject to change, and court personnel can inform you of the correct amount. The plaintiff can recover these costs as part of the judgment if the case is successful.

You must file small claims actions in the county where the defendant or defendant's agent resides or is doing business, or in the county where the cause of action arose. If you file in the wrong court, your case will be dismissed and you will lose the filing fees and prepaid costs.

Additionally, claims filed in Small Claims Court are subject to the same **statute of limitations** restrictions that would apply if the claim was filed in regular county court. A statute of limitations basically states you must file a lawsuit within a certain time after your injury (or discovery of your

injury), or your lawsuit will be barred. The statute of limitations is different for each type of claim. An attorney can advise you on the statute of limitations that applies to your particular claim. However, it is best to file your lawsuit as soon as you are injured or discover you have been injured.

PARTIES IN SMALL CLAIMS ACTIONS

An individual, partnership, limited liability corporation (LLC), corporation, union, association or any other kind of organization or entity can be a plaintiff or a defendant in a small claims action.

You may not file a claim assigned to you by someone else or with a power of attorney. Only an individual who is directly involved with the transaction or cause of action may sue in Small Claims Court. a small claims action. However, a personal representative of an estate, a guardian or conservator may sue on behalf of another in Small Claims Court.

COUNTERCLAIMS AND SETOFFS

When the defendant receives notice of the small claims filing, he may file a counterclaim or setoff with the court. A **counterclaim** is a statement by the defendant that he is owed money or property by the plaintiff. A **setoff** is an admission by the defendant that he owes some money to the plaintiff, but that the plaintiff also owes the defendant money.

PREPARING YOUR CASE

It is the obligation of the plaintiff on the original claim and the obligation of the defendant on the counterclaim or setoff to persuade the judge that his position and claim is valid. Both parties may bring evidence in the form of documents or witnesses to support their side.

You may simply ask your witness to appear in court and testify. If the person is reluctant or if you are unsure whether the witness will attend the hearing, you may make a written request to the court for a subpoena, which will then be served on the proposed witness and will compel the witness to attend the trial. A witness fee and sheriff's fees for the service of the subpoena must be paid by the party who wants the witness to testify. If the fee is not paid, the witness is not required to attend the trial and testify. The cost of these fees will be made a part of the court's judgment.

The following are examples of evidence you may wish to consider in certain cases:

- If your case involves poor workmanship, bring in a witness who is knowledgeable about the type of work in question, who does not have a direct interest in your case, and can testify as to the standards of proper workmanship.
- For car accidents, copies of the police accident report, repair bills or written estimates and photos of the damages of the accident scene may be helpful.
- In personal injury cases, medical bills and photos of the injured party may be beneficial to the court.
- In landlord/tenant disputes, a copy of the lease, if there is one, as well as receipts or canceled checks for rent and deposits, and emails or anything else in writing pertaining to the case should be produced. If there is a question as to damages or the condition of the apartment, witnesses and photos would be helpful, as well as repair bills and estimates.
- In cases involving faulty merchandise, any warranties or guarantees that may be applicable should be presented.

HOW THE CASE IS HANDLED

The plaintiff's evidence is presented first and then the defendant's evidence is presented. Present your case in a brief, orderly fashion. If you wish, you may write it out in advance and read it to the court.

Limit your testimony and evidence to issues directly concerning the case. If the judge asks questions, answer carefully and accurately. Do not argue with the judge, interrupt the other party or witnesses, or make personal attacks on anyone. The judge will either decide the case at the end of the trial or will take the case under advisement and inform you later of the decision.

SETTLEMENT OF CASES

In most cases, neither party is one hundred percent right or wrong. You are encouraged to try to settle your case before trial. If a settlement is agreed to, the parties should notify the court prior to the time set for trial and the case will be dismissed or a judgment entered according to your agreement. For the protection of all participants, the notice of settlement

and request for dismissal should be in writing. Filing fees are not refundable.

DEFAULT JUDGMENT

If the defendant chooses not to appear at the time and place set for hearing and does not request or receive a continuance, the court may, after hearing the plaintiff's evidence, award a default judgment to the plaintiff. A judgment rendered against a defendant in his or her absence may not be set aside but may only be appealed.

APPEALS

If either party is dissatisfied with the decision of the court, the case can be appealed. The appealing party has 30 days to file their notice of appeal. For more information on the appeals process, *see*: <http://court.nol.org/self-help/smallclaimsappeals.html>.

COLLECTING YOUR MONEY

Being awarded a judgment does not guarantee that you will ever collect money. ***The court is not responsible for collecting the judgment.*** If the judgment debtor (the losing party) does not voluntarily pay the judgment, the judgment creditor (the winning party) may attempt to collect the judgment through the court process.

The clerk of the court (or online) has forms available to assist the judgment creditor in collecting the judgment by garnishing wages and bank accounts or execution against the property of the judgment debtor. When the forms are completed, it is the duty of the party seeking enforcement of the judgment to make arrangements with the sheriff's office for service of these papers and to complete the garnishment or execution procedures. If the case has been properly filed, you must wait until the appeal is decided before attempting to collect the judgment.

If the judgment debtor makes payments to you directly, you should notify the court when payments are completed. Your court may allow the judgment debtor to make payments through the county court.

Both garnishments and executions (seizing the debtor's property for sale by the sheriff) are risky

for the judgment creditor. Unless the property or debt sought to be garnished is readily apparent, you should talk to a civilian attorney before trying to enforce your judgment. A civilian attorney may prepare and file the necessary papers to collect your judgment. A wrongful execution or garnishment may result in a lawsuit being filed by the debtor or some other offended party. The amount of that suit could be significantly greater than the original judgment. If you have any doubts about collecting your judgment, consult a civilian attorney.

BANKRUPTCY

If you have a claim against an individual but are aware that the claim is listed as a debt in a bankruptcy proceeding, you are prohibited by federal law from pursuing your claim in small claims court or pursuing collection on a judgment. Parties who knowingly pursue a claim listed in bankruptcy may be held in contempt by the federal bankruptcy court.

A defendant in bankruptcy who receives notice that he or she is being sued or that collection efforts are being made on a judgment previously entered should notify the court with documentation showing the existence of the bankruptcy proceedings and that this claim is included.

This handout is only intended to give general information, and not be used as a substitute for legal advice from a legal assistance attorney.

Resources:

- <http://court.nol.org/self-help/smallclaimsfilinfo.html>
- <http://court.nol.org/self-help/smallclaims.html>
- <http://court.nol.org/self-help/fees.html>
- <http://court.nol.org/forms/county/CC-4-1.pdf>
- <http://court.nol.org/self-help/smallclaimsappeals.html>
- <http://statelaws.findlaw.com/nebraska-law/nebraska-civil-statute-of-limitations-laws.html>
- <http://court.nol.org/mediation/center-locations.shtml>